FILE COPY

Office - Supreme Court, U. S.
FILED
SEP 23 1937
CHARLES ELMORE CROPLEY
CLERK

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1937

No. 10

OCEAN BEACH HEIGHTS, INC., NORMANDY BEACH DEVELOPMENT COMPANY, ET AL.,
Petitioners,

vs.

THE BROWN CRUMMER INVESTMENT COMPANY, TOWN OF NORTH MIAMI, ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT.

BRIEF OF PETITIONERS

J. JULIEN SOUTHERLAND,
SCOTT M. LOFTIN,
JNO. P. STOKES,
JAMES E. CALKINS,
LOFTIN, STOKES & CALKINS,
HENRY K. GIBSON,
Miami, Florida,
Solicitors for Petitioners.

Page

H. Taxing officials do not now have, and have never had, lawful authority for assessing the lands and taxing the owners 13
I. Taxation without representation 13

TABLE OF CASES CITED.

Beyer v. *City of Athens, Tenn.*, 249 Fed. Rep. 849 9
Bourbon County v. *Block*, 99 U. S. 686, 25 L. Ed. 491 7
City of Winter Park v. *Dunblaine, Inc.*, 121 Fla. 600, 164 So. 366 11
Clapp v. *Otoe County, Neb.*, 104 Fed. 473 7
County Commissioners of Comanche County, Kansas, v. *Lewis*, 133 U. S. 198, 33 L. Ed. 604 7
Duke v. *Taylor*, 37 Fla. 64, 19 So. 172, 31 L. R. A. 484, 53 A. S. R. 232 9
Hawks v. *Hamill*, 288 U. S. 52, 77 L. Ed. 610 7
Hayes v. *Holly Springs*, 114 U. S. 120, 29 L. Ed. 81 9
Leatherman et al. v. *Alta Cliff Co. et al.*, 114 Fla. 305, 153 So. 845 ..... 3, 4, 5, 6
Mahood et al. v. *State ex rel Davis, Attorney General, et al.*, 101 Fla. 1254, 133 So. 90 ..... 3, 6
Marine National Exchange Bank of Milwaukee v. *Kalt-Zimmers Manufacturing Co.*, 293 U. S. 357, 79 L. Ed. 427 7
Merrill v. *Town of Monticello*, 138 U. S. 673, 34 L. Ed. 1069, 1078 9
Norton v. *Shelby County*, 118 U. S. 425, 30 L. Ed. 178 9
Sioux County v. *National Surety Co.*, 276 U. S. 238, 240, 72 L. Ed. 547, 549 7
Sparks et al. v. *Ewing et al.*, 120 Fla. 520, 163 So. 112 12
State v. *Stuart*, 97 Fla. 69, 120 So. 335 12
State v. *City of Coral Gables*, 114 Fla. 326, 154 So. 234 10
State ex rel. Fidelity Life Association v. *City of Cedar Keys*, 122 Fla. 454, 165 So. 672 10
State ex rel. Landis, Attorney General, et al., v. *City of Coral Gables*, 120 Fla. 492, 163 So. 308 11

Page

Supreme Lodge v. *Meyer*, 265 U. S. 30, 68 L. Ed. 885 7
Town of Enterprise et al. v. *State*, 29 Fla. 128, 10 So. 740 6
Weinberger v. *Board of Public Instruction of St. Johns County et al.*, 93 Fla. 470, 112 So. 253 9

OTHER AUTHORITIES CITED.

8 Fletcher Cyclopedia of Corporations, Section 3785, page 79 9
Section 240 (a) of the Judicial Code (28 U. S. C. A., Section 347 (a)), as amended by Act of Congress of February 13, 1925, Chapter 229, Section 1, 43 Stat. 938 2

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1937

No. 10

OCEAN BEACH HEIGHTS, INC., NORMANDY BEACH DEVELOPMENT COMPANY, ET AL.,

Petitioners,

vs.

THE BROWN CRUMMER INVESTMENT COMPANY, TOWN OF NORTH MIAMI, ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT.

BRIEF OF PETITIONERS

1.

Opinions Below.

The opinions of the Judges of the Circuit Court of Appeals are reported at pages 978-981 of 87 F. (2d).

The opinion of the District Judge on final hearing has not been reported but appears at page 378 of the Transcript of the Record.

2.

Jurisdiction of This Court.

1. Jurisdiction of this Court is invoked under Section 240 (a) of the Judicial Code (28 U. S. C. A., Section 347 (a)), as amended by the Act of Congress of February 13, 1925, Chapter 229, Section 1, 43 Stat. 938.

The petition for certiorari was filed February 16, 1937, and the writ was granted April 12, 1937.

2. The decision to be reviewed is the result of the opinion of two of the Circuit Judges, rendered January 22, 1937, affirming the final decree of the District Judge, in the Southern District of Florida, at Miami, dated February 10, 1936.

3.

Statement of the Case.

The Brown Crummer Investment Company, a Kansas corporation, filed its bill in chancery, in the District Court of the Southern District of Florida, at Miami, against the Town of North Miami, its officials, and the petitioners, who own real estate along the Atlantic Ocean, east of Biscayne Bay, for the purpose of enjoining the Town and its officials from failing and refusing to assess and collect, and the petitioners, as land owners, from refusing to pay to the Town, for the benefit of the plaintiff, *ad valorem* taxes on their real estate, claimed to be taxable for the liquidation of a common law judgment, rendered June 19, 1931, in approximately the sum of $11,790.00, recovered by the plaintiff in the same Court against the Town, on certain general improvement bonds dated January 1, 1927 (R. 1).

The petitioners here, defendants to the bill of complaint, filed motions to dismiss the bill (R. 52, 54), which were

denied by the District Judge (R. 55). They thereupon answered (R. 64, 105). Two answers were filed by the different parties but they are substantially the same.

By their answers the petitioners here, defendants to the bill, averred that their lands were not subject to taxation for the purpose alleged in the bill, because their lands had never been in the territorial limits of the Town of North Miami, for the reason that the Florida Statutes, under which the Town was organized by 38 electors in mass meeting, on February 5, 1926, did not authorize the villagers living on the west side of Biscayne Bay to span the Bay and take in lands on the east side of the Bay, and that the Supreme Court of Florida, in *Mahood et al.* v. *State of Florida, ex rel., Davis, Attorney General, et al.*, 101 Fla. 1254, 133 So. 90, decided March 24, 1931, had so held respecting precisely the same lands in question here; and that the Supreme Court of Florida, in *Leathermann et al.* v. *Alta Cliff Company, et al.*, 114 Fla. 305, 153 So. 845, decided March 21, 1934, had held that these same lands were never, *de facto* nor *de jure*, in the said Town, and, therefore, never subject to taxation by the Town.

The Town of North Miami adjoins the City of Miami on the north, and both are in Dade County. The Town was organized by a mass meeting held on the west side of Biscayne Bay. The boundaries of the Town were defined by resolution adopted by the mass meeting, and it took in 16½ square miles of territory and spanned the Bay to take in a substantial area of undeveloped lands east of the Bay and along the Atlantic Ocean. Fewer than a dozen people lived in the area east of the Bay, and a circuitous route 10 miles long had to be traveled from petitioners' lands to reach the Town Hall.

The Florida statute under which the Town was organized is copied in full in the appendix to this brief.

The cause was referred to a master in chancery (R. 124), who took evidence and reported the same to the District Judge with his findings (R. 126).

The Master's Report was excepted to (R. 375).

The exceptions were overruled and the findings of fact and conclusions of law were made in writing (R. 378) and followed by the entry of a sweeping final decree for the plaintiff below, Respondents here (R. 390).

By the final decree, the District Judge:

(a) Enjoined the petitioners herein, defendants to the bill, "or any other person, firm or corporation owning, holding or interested in any property within the boundaries of the Town of North Miami, formerly Miami Shores, and who holds, owns or is interested in said property under and by virtue of title from any of said defendants above-named," from instituting any action at law or in equity or from prosecuting any action now pending against E. B. Leatherman, Clerk of the Circuit Court of Dade County, or his successor or successors in office, to compel the cancellation of any tax certificates held by him and issued by the Town of North Miami, formerly Miami Shores, on account of the nonpayment of taxes levied by it on property within the area above described, or to prevent him from selling said tax certificates or issuing tax deeds thereon.

(b) Enjoined Ocean Beach Heights, Inc., from enforcing the decree of the Circuit Court of Dade County, declaring void the tax certificates described in the suit of *Alta Cliff Company et al.* v. *E. B. Leatherman et al.*, and from preventing by legal action the issuance of tax deeds upon the said certificates.

(c) Enjoined other owners of lands east of Biscayne Bay from in any manner interfering with the assessment and collection of *ad valorem* taxes by the Town of North Miami.

(d) Enjoined the Town of North Miami and its officials "from refusing to perform in full his or their legal duties in the matter of assessing, levying and collecting taxes and/or assessments which may have been heretofore already levied by the Town of North Miami, or which may hereafter be levied by it or by its duly authorized officers and agents against lands" included in a described area, which are the lands east of Biscayne Bay.

(e) Enjoined E. B. Leatherman, as Clerk of the Circuit Court of Dade County, from cancelling tax certificates issued by the Town of North Miami, on account of the nonpayment of taxes levied against the lands east of Biscayne Bay.

By a general recital the injunction was restricted to taxes levied for debt service.

On appeal by the Petitioners here, defendants to the bill, the final decree was affirmed by the United States Circuit Court of Appeals for the Fifth Circuit, Judge Sibley dissenting.

4.

Assigned Errors to be Argued.

(A) THE CIRCUIT COURT OF APPEALS ERRED IN NOT FOLLOWING THE DECISION OF THE SUPREME COURT OF FLORIDA IN LEATHERMAN ET AL. VS. ALTA CLIFF CO. ET AL., 114 FLA. 305, 153 So. 845.

(B) THE CIRCUIT COURT OF APPEALS ERRED IN HOLDING THAT UNDER GENERAL LAW, IN THE ABSENCE OF STATUTORY AUTHORITY FOR INCORPORATING THE LANDS IN THE TOWN, SUCH LANDS WERE DE FACTO IN THE TOWN WHEN THE BONDS WERE ISSUED AND, THERFORE, SUBJECT TO TAXATION FOR THE PURPOSE OF RAISING MONEY WITH WHICH TO PAY THE BONDS.

5.

ARGUMENT.

A. The Federal Courts are obliged to follow the State Supreme Court's interpretation of a State statute, especially one relating to State and local governmental units, and their powers and duties.

The Supreme Court of Florida, in *Leatherman et al.* v. *Alta Cliff Co. et al.*, 114 Fla. 305, 153 So. 845, decided March 21, 1934, held that the lands east of Biscayne Bay were never, *de jure* nor *de facto,* in the Town of North Miami, and, therefore, were never subject to municipal taxation, for the reason that there was never a law in Florida which authorized the mass meeting of 38 voters living west of Biscayne Bay, on February 5, 1926, to reach out across the Bay and take in lands on the other side. The identical lands involved in the instant case were involved in the *Alta Cliff* case.

Previously; in *Mahood et al.* v. *State ex rel. Davis, Attorney General, et al.*, 101 Fla. 1254, 133 So. 90, decided March 24, 1931, the Florida Supreme Court, in a *quo warranto* proceeding involving the lands involved here, laid the basis for the entry of a judgment of ouster in the Circuit Court of Dade County, Florida, on December 18, 1931.

And way back, in 1892, the Supreme Court of Florida, in *Town of Enterprise et al.* v. *State,* 29 Fla. 128, 10 So. 740, held that a mass meeting could not bring into a town noncontiguous lands.

The Supreme Court of Florida has consistently held that lands separated from other lands cannot by a mass meeting be incorporated in a town.

The District Judge seemed to consider that he was not bound by the two decisions of the Supreme Court of Florida, because both came after the issuance of the bonds by the

Town. On page 388 of the Record will be found the District Judge's quotation from the opinion of this Court in *Bourbon County* v. *Block*, 99 U. S. 686, 25 L. Ed. 491, decided May 5, 1879, and a reference to

Clapp v. *Otoe County, Neb.*, 104 Fed. 473, decided October 9, 1900;

County Commissioners of Comanche County, Kansas, v. *Lewis*, 133 U. S. 198, 33 L. Ed. 604, decided January 27, 1890.

In the first place, the two Florida cases relied on by the petitioners, while decided after the bonds were issued by the Town of North Miami, were nevertheless bottomed on a case holding to like effect, decided March 16, 1892, and reported as *Town of Enterprise et al.* v. *State*, 29 Fla. 128, 10 So. 740.

In the second place, whatever may have been the old rule, the present rule requires that the Federal courts follow the interpretation of a State statute by the Supreme Court of the State, even if the interpretation be made by the State court for the first time after the issuance of the bonds in question.

Marine National Exchange Bank of Milwaukee v. *Kalt-Zimmers Manufacturing Co.*, 293 U. S. 357, 79 L. Ed. 427;

Hawks v. *Hamill*, 288 U. S. 52, 77 L. Ed. 610;

Supreme Lodge v. *Meyer*, 265 U. S. 30, 68 L. Ed. 885;

Sioux County v. *National Surety Co.*, 276 U. S. 238, 240, 72 L. Ed. 547, 549.

In *Hawks* v. *Hamill*, *supra*, this Court observed that the Federal courts should follow "the considered dictum" of a State supreme court on a local question.

Circuit Judges Hutcheson and Foster, on the appeal, seem to have disregarded the Florida case of *Leatherman*

et al. v. *Alta Cliff Co. et al.*, on the ground that it was not necessary, in 1934, for the Court to interpret the decision in the *Mahood* case, decided in 1931, as looking backward as well as forward, and to hold that the lands east of Biscayne Bay were never, *de jure* nor *de facto*, in the Town, and, therefore, never subject to taxation by the Town.

The *Alta Cliff* case involved the validity of the assessments of the lands east of Biscayne Bay for the years 1927, 1928, 1929 and 1930; the judgment of ouster in the *Mahood* case was entered in 1931; and the *Alta Cliff* case was instituted in 1932. The effect of the judgment of ouster on the prior assessment of the lands was the only question presented to the Florida Supreme Court in the *Alta Cliff* case. That Court was obliged to determine whether the subsequent judgment of ouster invalidated the prior assessments, and the Court held that it did. How can it be said to be *obiter dictum* for a court to decide the one question presented for adjudication?

But if the Florida Court's holding were only a "considered dictum," the Federal courts would be bound to follow it under the recent decision of this Court, in *Hawks* v. *Hamill, supra.*

B. The Florida cases aside, lands cannot be de facto in a town absent statutory authority to incorporate the lands in the town.

The two circuit judges, after disregarding the Florida cases, held that the lands east of Biscayne Bay were *de facto* in the Town of North Miami when the bonds were issued, despite the fact there was no law in existence at the time under which the lands east of Biscayne Bay could have been incorporated in the Town by the mass meeting.

There must be an existing law, compliance with which would bring the lands *de jure* into the Town, before the

lands could, under any circumstances, fairly be said to be *de facto* in the Town.

Norton v. *Shelby County*, 118 U. S. 425, 30 L. Ed. 178;
Duke v. *Taylor*, 37 Fla. 64, 19 So. 172, 31 L. R. A. 484, 53 A. S. R. 232;
8 Fletcher Cyclopedia of Corporations, Section 3785, Page 79.

C. Petitioners are not estopped from asserting that their lands have never been in the town.

The amount of money spent east of Biscayne Bay was insignificant, and was primarily for the purpose of protecting persons living west of the Bay from mosquitoes.

In the absence of statutory warrant for including in the Town the lands east of the Bay, acquiescence, if acquiescence there was, cannot substitute for jurisdiction withheld by the legislature.

Hayes v. *Holly Springs*, 114 U. S. 120, 29 L. Ed. 81;
Merrill v. *Town of Monticello*, 138 U. S. 673, 34 L. Ed. 1069, 1078;
Beyer v. *City of Athens, Tenn.*, 249 Fed. Rep. 849;
Weinberger v. *Board of Public Instruction of St. Johns County et al.*, 93 Fla. 470, 112 So. 253.

D. E. B. Leatherman, as clerk of the Circuit Court of Dade County, Florida, the officer authorized by law to issue tax certificates consequent to delinquent taxes, and tax deeds when the certificates are two years old and the lands not redeemed, is in the predicament of first having been enjoined by the Alta Cliff case from assigning tax certificates, and issuing tax deeds, touching the lands east of Biscayne Bay, and then enjoined from refusing so to do by the decree of the District Judge, affirmed by the Circuit Court of Appeals, in the instant case.

We now have the tax certificates and the tax deeds, issued as the result of nonpayment of taxes, assessed by

the Town, against lands east of Biscayne Bay, void in the State courts and valid in the Federal courts.

Moreover, we have litigants hereafter enjoined by the Federal courts from proceeding in the State courts to question the validity of such taxes, and the parties to the *Alta Cliff* case enjoined from enforcing the decree entered by the Court of first instance and affirmed by the highest State court.

The authority and powers of officials who are creatures of State law, predetermined and limited by the Supreme Court of Florida's interpretation of the State statute, are enlarged by a subsequent decision of a Federal court, which refuses to follow the interpretation of the State statute by the highest State court.

E. Judicial validation of bonds did not foreclose right of property owners to contest the claim that their lands were never in the town.

Judicial validation of the bonds, a special statutory proceeding, did not foreclose the question as to the boundaries of the Town, because that question is not justiciable in such a proceeding.

State v. *City af Coral Gables,* 114 Fla. 326, 154 So. 234; *State ex rel. Fidelity Life Association* v. *City of Cedar Keys,* 122 Fla. 454, 165 So. 672, concluding paragraph of the opinion.

F. A brief review of the Florida cases cited in the opinion of Judge Hutcheson, to support his conclusion, may not be amiss.

In *State ex rel. Fidelity Life Ass'n.* v. *City of Cedar Keys et al.,* 122 Fla. 454, 165 So. 672, the officers of the city, respondents in a mandamus proceeding to force collection of taxes to pay bonds, attempted to deny the existence of the city that issued the bonds, which had been judicially

and legislatively validated; and the existence of the city having been impliedly recognized by a legislative act of 1917 (see top of page 676, 165 So.). The city officers attempted to repudiate the bonds on the ground that, in a *quo warranto* proceeding by two property owners, in the Circuit Court, the court held the City unlawfully created. The Supreme Court of Florida held that the City officers could not repudiate the bonds on the strength of the judgment of ouster of the City obtained by the two property owners. The court, however, in the concluding paragraph of its opinion, saved the rights of individual property owners who might be able to show that their lands were never lawfully included in the City. In the instant case, there is no attempt to deny the existence of the Town of North Miami, and the validity of the bonds issued by the Town is not questioned, and the officers of the Town are not opposing payment of the bonds. What we have here is just exactly what the Supreme Court of Florida referred to in the concluding paragraph of its opinion, namely, individual property owners setting up that their lands were never lawfully in the Town of North Miami.

In *City of Winter Park* v. *Dunblaine, Inc.*, 121 Fla. 600, 164 So. 366, a bondholder sued the issuing City on its bonds. The City asked, and was refused leave, to file a plea alleging generally that the bonds were not issued for a municipal purpose, but for the purpose of improving wild lands and aiding private individuals and corporations which owned the lands. Held, plea too general, set up no defense, no error in refusing leave to file it.

In *State ex rel. Landis, Attorney General, et al.* v. *City of Coral Gables,* 120 Fla. 492, 163 So. 308, the legislature had defined the boundaries of the City, in which the property owner acquiesced for six or eight years, during which time large sums of money were loaned to the City and

many public improvements constructed on the faith of the validity of the legislative act defining the boundaries of the City. Held, in *quo warranto* proceedings by a property owner, who claimed that his lands received no benefits by being in the City, that he was estopped by delay and acquiescence.

In *Sparks et al.* v. *Ewing et al.*, 120 Fla. 520, 163 So. 112, there was involved the validity of a bond issue by the City of Hialeah, issued without a vote of the people, under special charter provision claimed to dispense with a vote of the people. The bonds had been judicially validated. Held, the Constitution did not require a vote of the people, and that, in the validation proceedings, the court had implicitly, at least, held the bonds validly issued, and that such validation proceedings foreclosed the question as to the validity of the questioned bonds.

We shall touch briefly on some of the points emphasized in the prevailing opinion of Judge Hutcheson, for the purpose of demonstrating that the learned Judge stressed points of no significance under Florida law.

It was erroneous to recite in the opinion, " * * * the proposed corporate limits as set out in the * * * bonds as fixed in forming the town, definitely included that east of the bay." In fact, the bonds do not purport to recite the boundaries of the town.

Because the Supreme Court of Florida, in the *Alta Cliff* case, disclaimed any intention of determining whether the legislature might include in one town lands separated by Biscayne Bay, because that question was not involved in the case, does not warrant the inference that the court would uphold such an Act. In *State* v. *Stuart*, 97 Fla. 69, 120 So. 335, the court let out of the City of Stuart lands separated from the body of the city by a stream, although the boundaries of the city had been defined by the legislature.

G. We would emphasize the difference between a judicial declaration that lands east of Biscayne Bay were never in the Town of North Miami, because of the lack of legislative authority to incorporate the lands in the Town and the judicial letting out of a town incorporated by special act of the Legislature of wild lands so remotely situated from the improved part of the town as not to be benefited by being included in the town.

In the former case it cannot fairly be stated that the lands were ever in the town, *de jure* or *de facto*. In the latter case there is reason for holding that the lands were in the town until let out.

H. Since the lands east of Biscayne Bay are not now, and have never been, in the Town of North Miami, it follows that the taxing officials of the Town do not now have, and have never had, lawful authority for assessing the lands and taxing the owners.

Courts may administer existing laws but they are without legislative functions. Courts may command town officers to perform duties and exercise powers conferred on them by law, but courts may not create legal duties and confer lawful powers.

I. Inasmuch as the lands in question are not now, and have never been, in the Town of North Miami, it follows also that owners of such lands, otherwise qualified to vote, have no voice in choosing the town officials who would exercise the important functions of assessing and taxing the lands and disbursing the funds thereby raised. It would be a case of taxation without representation.

We submit that the decree of the Circuit Court of Appeals should be reversed with directions to reverse the

decree of the District Court and order the bill of complaint dismissed.

LOFTIN, STOKES & CALKINS,
Ingraham Building, Miami, Florida,
Solicitors for Ocean Beach Heights, Inc.

——— ———,

Ingraham Building, Miami, Florida,
Solicitor for Normandy Beach Development Company, a corporation, LUCILLE F. ENSIGN *and her husband,* WALTER C. ENSIGN, *and* TATUM'S OCEAN PARK COMPANY, *a Corporation.*

(1220)

APPENDIX.

SECTIONS 1825, 1826, 1827, 1828 OF THE REVISED GENERAL STATUTES OF FLORIDA, 1920, PROVIDING FOR THE INCORPORATION OF A TOWN BY MASS MEETING.

"1825. Number of inhabitants necessary to incorporate.—It shall be lawful for the male inhabitants of any hamlet, village or town in this State, not less than twenty-five in number, who shall have the qualifications hereinafter prescribed to establish for themselves a municipal government with corporate powers and privileges as hereinafter provided.

"1826. Distinction between cities and towns.—Whenever any municipal government is established, and it shall appear that there are three hundred registered voters within the limits hereby to be designated, it shall be and the same is hereby incorporated and designated as a city, entitled to the privileges of a city. All municipal governments having a less number of voters than those named above shall be and the same are hereby designated and declared incorporated towns, entitled to the privileges and rights of incorporated towns.

"1827. Publication of notice to assemble and organize.—Whenever any community of persons shall desire to form a municipal corporation under the provisions of this chapter, they shall, for a period of not less than thirty days, cause to be published in some newspaper of the county, or by posting in three places of public resort in the immediate vicinage, a notice requiring all persons who are registered voters, residing in the proposed corporate limits, which shall be stated in this notice, to assemble at a certain time and place to select officers and organize a municipal government.

"1828. Proceedings of meeting.—At the same time and place designated in the notice aforesaid, the qualified electors present, being not less than two-thirds of those whom it is proposed to incorporate, and not less than twenty-five in number, shall select a corporate name and seal for the

municipality which they propose to form, and designate by definite metes and bounds the territorial limits thereof. They shall then proceed to choose by a vote of a majority of the said electors a mayor and not more than nine and not less than five aldermen, who shall be known as the city council, and in whom shall vest the government of the city. There shall also be chosen at the same time and place, and in like manner, a city clerk and a marshal. The mayor, clerk and the marshal shall continue in office for the period of one year from the date of their election, or until their successors are elected and qualified: Provided, That the metes and bounds in this section shall not in any case apply to the fixing or establishing the boundary lines of towns and cities now or heretofore incorporated by the now existing laws of this State."